

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 04-CV-10040 (REK)

**INTAC INTERNATIONAL, INC.,
Plaintiff**

v.

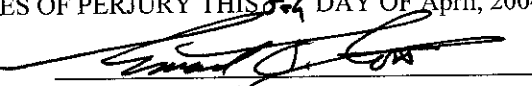
**ACORP d/b/a ROOTERMAN
DONALD MACDONALD**

Defendants.

AFFIDAVIT OF ATTORNEY EMANUEL D. TORTI

1. My name is Emanuel D. Torti of the Law Firm of TORTI FLANAGAN, 146 Main Street, Norfolk, MA 02056 and I am counsel of record with John J. Flanagan, for Plaintiff, Intac International, Inc., in the above referenced matter.
2. Attached hereto as Exhibit A is the summary and results of my investigation of the relationship between Donald MacDonald, Defendant and ACORP d/b/a Rooterman Defendant, as relates to the basis for his being maintained as an individual Defendant in the above captioned matter in response to Defendants Motion to Dismiss pursuant to F.R.C.P. 12.
3. The enclosed summary includes my findings as well as presumptions that will be examined during the discovery phase of litigation.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5TH DAY OF April, 2004.


Emanuel D. Torti, Esq.

A search of the Corporate Records of The Commonwealth of Massachusetts for Donald F. MacDonald reveals that Mr. MacDonald has set up a maze of close corporations at 268 Rangeway Rd., No. Billerica, Mass. Four (4) of his close corporations at 268 Rangeway Rd., No. Billerica, MA, are officially controlled by him, such as A-Corp., TERMANATOR, INC., The Realty Network, Inc., and The Sullivan Road, LLC. Two (2) other close corporations at 268 Rangeway Rd., No. Billerica, Mass are used by Donald F. MacDonald to secure WINTAC™ licenses from INTAC INTERNATIONAL, INC. He has used a Rooter-Man Corp. credit card to secure licenses (Vincent MacDonald, President) and has signed a Sewerman, Inc. check (Brian MacDonald, President) to secure a WINTAC™ upgrade ostensibly for A-Corp. Although he is not listed as a corporate officer of Rooter-Man Corp. or Sewerman, Inc. and does not sign their annual reports, he is listed as the contact person for both companies on their 2002 Annual Report.

The Wintac™ Order/Registration form provided by Intact International, Inc, ("INTAC") for the order of a Single-User License "to install and use WINTAC on each office computer operated by the company named below at one and only one physical location" was signed by Donald MacDonald on 9-18-98. The Company name that was listed by Donald MacDonald was that of A-Corp. The contact name listed by Donald MacDonald was that of Donald MacDonald of 268 Rangeway Rd., No. Billerica, Mass. 01862.

A search of the Corporate Records of The Commonwealth of Massachusetts for A-Corp. lists Donald F. MacDonald as President, Treasurer, Clerk and Sole Director with a principal place of business at 268 Rangeway Rd., No. Billerica, Mass. 01862. A-Corp. appears to be a close corporation with Fifteen Thousand (15,000) Shares Authorized, with no par value, and One Hundred (100) shares issued. The fiscal year ends on 12-31 and the date of incorporation was March 2, 1982. As the President, Treasurer, Clerk and Sole Director of A-Corp., a close corporation with a mere one hundred (100) shares issued, Mr. MacDonald does not answer to or report to any higher executives at A-Corp, but is in fact the sole ranking executive at A-Corp. Mr. MacDonald has the sole personal control over his actions and inactions and is in control of corporate actions and governance at A-Corp. In the instant case, the acts of A-Corp. are the direct acts of Donald F. MacDonald.

It is also informative to note that although Donald F. MacDonald is the President, Treasurer, Clerk and Sole Director of A-Corp., has the authority to make business decisions for A-Corp., and to spend money on behalf of A-Corp., he does not pay for the Wintac™ Single-User License with A-Corp. funds on September 18, 1998 (*emphasis applied*). Rather than using A-Corp. funds, despite his corporate authority to do so, he personally lists the "Cardholder name" on the Wintac™ Order/Registration form as "Rooter-Man Corp Donald MacDonald", and personally signs Card number 3782 687478 53007 as "Donald MacDonald". In fact, Donald MacDonald appears to play a shell game on the Wintac™ Order/Registration form by procuring the Single-User Wintac™ license with a personal credit card or credit card from Rooter-Man Corp. but lists A-Corp. as the Company Name, but the signs as "Rooter-Man Corp Donald MacDonald." Donald

MacDonald also placed an order for Wintac™ 2.1 Upgrade for the Single-User License on or about April 9, 1999 and adding name "Rooter-Man" to the method of payment section of the form. Donald MacDonald placed an order for the Network Edition of Wintac™ Single User License on May 27, 1999, and pays for the Network Edition License by signing check from a company called Sewer-Man, Inc., P.O. Box 290, No. Billerica, MA 01862. On May 16, 2000, Donald MacDonald orders the WINTAC™ 2001 Upgrade, signs a credit card authorization as Donald MacDonald and adds the name "Rooter-Man." On November 20, 2001, a "Gena" from A-Corp. ordered WINTAC™ Pro 2002 Upgrade, a Phyllis MacDonald signed a credit card charge for Sewerman, Inc.

A search of the Corporate Records of The Commonwealth of Massachusetts for Rooter-Man Corp. does not list Donald F. MacDonald as having any official capacity with Rooter-Man Corp. The President is Vincent MacDonald; the Treasurer and Clerk is Charlene MacDonald. Vincent and Charlene MacDonald are Directors with a principal place of business at 268 Rangeway Rd., No. Billerica, Mass. 01862. Rooter-Man not only shares the same principal address as A Corp. but also appears to be a close corporation with Fifteen Thousand (15,000) Shares Authorized, with no par value, and One Hundred shares (100) shares issued. The fiscal year also ends on 12-31. The date of incorporation was January 1, 1982. However, Donald MacDonald is listed as the contact person on the March 17, 2003 Massachusetts Corporate Annual Report.

A search of the Corporate Records of The Commonwealth of Massachusetts for Sewer Man, Inc. does not list Donald F. MacDonald as having any official capacity with Sewer Man, Inc. but he signs a Sewerman, Inc. check on May 27, 1999 to pay for the Wintac™ Network Edition License. The President is Brian MacDonald; the Treasurer and Clerk is Charlene MacDonald. Brian and Charlene MacDonald are Directors with a principal place of business at 268 Rangeway Rd., No. Billerica, Mass. 01862. Rooter-Man not only shares the same principal address as A Corp. and Rooter-Man, but also appears to be a close corporation with Fifteen Thousand (15,000) Shares Authorized, with no par value, and One Hundred shares (100) shares issued. The fiscal year also ends on 12-31. The date of incorporation was January 8, 1974. Although Charlene MacDonald signs the March 17, 2003 Massachusetts Corporate Annual Report as Treasurer, Donald MacDonald is listed as the contact person.

Donald F. MacDonald appears to be in total and sole control of the decisions and actions of A-Corp., but attempts to shield his personal actions by using the corporate shield of A-Corp. while entering into the license transactions with INTAC. Rather than using A-Corp assets to pay for the A-Corp licenses, he pays for the licenses with either personal funds or the assets of another entity, namely Rooter-Man Corp and/or Sewerman, Inc. It appears that Donald MacDonald, despite his numerous signatures on INTAC order forms, checks and credit card charges, has never used an A-Corp. check or credit card to pay for the A-Corp. licenses from INTAC. He now attempts to hide behind the corporate veil of one entity that did not pay for the object of his own intentional wrongdoing.

Donald F. MacDonald appears to favor attempts to shield himself from personal liability for his own personal actions by controlling multiple entities while directing the

expenditure of monies from other entities. It is noteworthy to point out that Donald F. MacDonald is also the President, Treasurer, Clerk and Sole Director of Termanator, INC. and the Realty Network, Inc. at the very same address at 268 Rangeway Rd., No. Billerica, Mass. 01862. In addition, the 268 Rangeway Rd., No. Billerica, Mass. 01862 address is also the principal business office for Donald F. MacDonald in his role as the sole manager of The Sullivan Road, LLC, organized on October 4, 1999.

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